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FISCAL IMPACT REPORT

ORIGINAL DATE
SPONSOR Campos **LAST UPDATED** 2-10-06 **HB** _____

SHORT TITLE Engineer Evaluation of Ground Water Transfers **SJM** 36

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer – Interstate Stream Commission (OSE)

SUMMARY

Synopsis of Senate Joint Memorial

Senate Joint Memorial 36 requests the State Engineer, when evaluating applications to, export ground water out of its basin of origin, to consider the availability of water supplies within the basin to which water is being exported.

Specifically the memorial notes that:

- certain governmental entities are considering or have considered policies to mine and export ground water from closed basins, such as the Estancia basin, which are often sole water supply sources for communities; and
- the ground water resources of these basins are not renewable and will not be replenished because they are being mined; and
- the exportation of ground water from these basins has the potential to shorten their productivity; and
- the Estancia basin regional water plan provides that the exportation of ground water is contrary to the greater interest of the planning area and that it must be ag-

gressively discouraged and opposed; and

- the ground water of the Estancia basin constitutes the sole potable water supply upon which the communities in the basin depend; and
- the local governments of Moriarty, Estancia, Mountainair, Edgewood and Torrance county and local residents of the Estancia basin have joined together in opposing increased mining and exportation of ground water from the Estancia basin; and
- the boards of county commissioners of Torrance, Bernalillo and Santa Fe counties have actively discouraged the exportation of any ground water from the Estancia basin; and
- during the hearings on the regional water plan and the Torrance county comprehensive ordinance, the Estancia basin public consistently voiced its opposition to the exportation of water from the Estancia basin, fearing that exportation will both impair the existing water rights and be detrimental to planning regions' public welfare; and
- the state engineer has administratively designated parts of the Estancia basin as a critical management area, curbing both domestic use and other uses of water; and
- there is uncertainty regarding the maximum amount of ground water that will be placed to beneficial use in any given year within the Estancia basin, and all studies conclude that current existing diversions from the aquifer exceed the rate at which it is being recharged; and
- the continued and future economic existence of the Estancia basin communities is dependent on a reliable, if not entirely sustainable, water supply; and
- some ground and surface water basins have access to reliable, renewable sustainable water supplies from renewable stream systems and have the ability to acquire water rights within those systems and also have sufficient ground water resources to sustain and their current and projected growth needs; and
- the public welfare of the state is served by requiring other basins to develop the available surface and ground water resources within their own basins rather than mining the nonrenewable ground water resources in the rural Estancia basin and depriving fellow New Mexicans, including ranchers, farmers and community governments of a future.

The memorial further resolves that:

- (1) the exportation of mined ground water from a closed ground water basin be consistent with the public welfare of New Mexico and not contrary to the planning objectives in a regional water plan; and
- (2) that any application to export water from a mined ground water basin be sup-

ported by proof of a need in the importing basin to import ground water from a mined basin and proof that there are no alternative available in-basin sources of water to supply the region seeking to import ground water from the mined basin.

The memorial resolves that that a copy of this memorial be transmitted to the state engineer.

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES

The Office of the State Engineer – Interstate Stream Commission (OSE) notes that water rights in New Mexico are individual property rights and therefore may be sold by the owner. While the state engineer does not allow transfer of groundwater rights from one underground basin to another, the water itself can be physically exported – if the exportation is done pursuant to a permit issued by the state engineer and in accordance with rules and regulations of the state engineer and state statutes. The state engineer regulates the use of water in the state – the place and purpose of use, etc. - through the permit process. To change any element of a water right including place of use (such as from one basin to another), the public must be given notice of the proposed change in accordance with §72-12-3 NMSA 1978 and be afforded the right to file objections with the state engineer regarding the proposed change on the bases of impairment, conservation of water within the state, or public welfare. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if he finds that proposed appropriation would not impair existing water rights from the source, is not contrary to conservation of water within the state, and is not detrimental to the public welfare of the state, grant the application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators from the source.

OSE further suggests that the memorial addresses the concept of “public welfare,” and discusses public welfare in the evaluation of water rights applications only in regards to the source of the water. It does not address public welfare in regards to the proposed place(s) of use of the water. The water statutes use the term “public welfare” but do not provide a specific definition. For water rights applications evaluations, the state engineer must consider the welfare of the people of the entire state – not one area of the state versus another area of the state.

ADMINISTRATIVE IMPLICATIONS

OSE indicates that this joint memorial, if passed, contemplates that the State Engineer would verify that the application to export water is supported by “proof” of a need in the basin to which groundwater is to be imported for water from the basin from which the groundwater is to be exported. The applicant also would have to show “proof” that there are no alternative in-basin water sources available. The memorial is not clear as to what is to be done if the proof is not adequate or what type of proof is required.

OTHER SUBSTANTIVE ISSUES

OSE notes that this joint memorial addresses the concept of “public welfare”. The joint memorial discusses public welfare in the evaluation of water rights applications only in regards to the source of the water. It does not address public welfare in regards to the proposed place(s) of use of the water. The water statutes use the term “public welfare” but do not provide a specific defi-

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BW/mt